

**United States Department of the Interior  
Bureau of Land Management**

---

**DECISION RECORD**  
**WY-060-EA13-147**

---

**November 2017**

**West Antelope II South Lease Modification**  
**WYW-177903**

---

High Plains District Office  
2987 Prospector Drive  
Casper, Wyoming 82604  
(307) 261-7600



## **Summary**

Antelope Mine is a surface coal mine located in the Powder River Basin approximately 20 miles southeast of Wright, Wyoming, and is operated by Antelope Coal, LLC, a subsidiary of Cloud Peak Energy. Federal coal lease WYW-177903 was issued to Antelope Coal on September 1, 2011. On November 29, 2012, Antelope Coal filed an application with the BLM to modify its existing federal coal lease WYW-177903 by adding 856.61 acres of contiguous federal coal lands located within Township 40 North, Range 71 West, 6th Prime Meridian, Converse County, WY.

The proposed modification tract would be mined as an extension of the currently permitted Antelope Mine. The applicant is the private surface owner on all the lands contained within the proposed tract. Reclamation would be completed according to the applicant's Wyoming Department of Environmental Quality mine permit.

This lease modification would not displace other competitive commercial interests in the lands or deposits, does not include competitive coal deposits that could be developed as a part of another potential or existing mining operation, and is in the interest of the United States. This lease modification would not exceed the modified acreage limitation of 960 acres as set forth with the passage of the Energy Policy Act of 2005.

A Determination of NEPA Adequacy (DNA) was prepared in response to the February 7, 2017 Interior Board of Land Appeals decision which set aside and remanded BLM's August 15, 2014 Decision Record for this coal lease modification. The remand was based on a procedural point associated with the interpretation of BLM's internal delegations of authority. Previous analyses from the 2014 West Antelope II coal lease mod EA and the 2008 West Antelope II EIS remain valid. BLM's decision to offer the WYW-177903 was affirmed by the D.C. Circuit in *WildEarth Guardians v. Jewell*, 738 F.3d 298 (December 24, 2013). Challenges to the lease modification decision resulting in remand (*WildEarth Guardians et al*, 189 IBLA 274 (February 7, 2017) and the Office of Hearings and Appeals denial of BLM's Petition for Director's Review (52 OHA 204, September 11, 2017) did not address any substantive challenges to the lease modification decision, but only held that the High Plains District Manager was not authorized to sign the Decision Record for the lease modification. Therefore, BLM is issuing this new decision record signed by the Wyoming BLM Deputy State Director for Minerals and Lands.

## **Decision**

As the authorized officer delegated with authority to make decisions on coal leasing NEPA analyses within the jurisdiction of the Wyoming High Plains District Office and based upon the analysis of potential environmental impacts described in Environmental Assessment DOI-BLM-WY-060-EA13-147, the attendant Finding of No Significant Impact (FONSI), the West Antelope II Final Environmental Impact Statement (FEIS), and other supporting documentation in the case file, it is my decision to select the Proposed Action, allowing federal coal lands within Sections 7, 8, 17, and 18, Township 40 North, Range 71 West to be processed by the Wyoming State Office as a lease modification to existing federal coal lease WYW-177903.

- 1. Compliance with applicable laws, regulations, and policies:** The Proposed Action and alternatives were evaluated under the following authorities: Mineral Leasing Act of 1920 as amended; Multiple-Use Sustained Yield Act of 1960; National Environmental Policy Act (NEPA) of 1969 as amended; Federal Coal Leasing Amendments Act of 1976; Federal Land Policy and Management Act of 1976; Surface Mining Control and Reclamation Act of 1977, and the Energy Policy Act of 2005.

Regulations at 43 CFR § 1610.5-3 (Conformity and Implementation) require actions to conform to the approved land use plan. The Approved Casper Resource Management Plan and Record of Decision (December 2007), as amended by the Wyoming Greater Sage-Grouse Proposed Land Use Plan Amendment Final Environmental Impact Statement (May 2015) and the Approved RMP Amendment for Greater Sage-Grouse Record of Decision (September 2015), allow for coal leasing and development. The BLM has determined that the proposed modification of federal coal lease WYW-177903 conforms to the Casper Resource Management Plan (RMP). The Casper RMP provides land use guidance for coal leasing in the proposed project area.

BLM has determined that including a social cost of carbon (SCC) analysis for this action is not appropriate. The Council on Environmental Quality (CEQ) regulations at 40 CFR § 1502.23, state (in part), "...for the purposes of complying with the Act, the weighing of the merits and drawbacks of various alternatives need not be displayed in a monetary cost-benefit analysis and should not be when there are important qualitative considerations."

The SCC protocol was developed by the Office of Management and Budget using an interagency working group in response to Executive Order 12866, which required federal agencies, to the extent permitted by law, "to assess both the costs and the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs." SCC estimates the monetary cost incurred by the emission of one additional metric ton of carbon dioxide (CO<sub>2</sub>), and is not applicable to non-CO<sub>2</sub> GHG emissions, such as methane. Estimating SCC is challenging because it is intended to model effects on the welfare of future generations at a global scale caused by additional carbon emissions occurring in the present.

The West Antelope II South Coal Lease Modification is not a regulatory action but rather a leasing action that allows an existing lessee the right to mine coal reserves that would otherwise be bypassed. It is BLM's determination that calculating the SCC from CO<sub>2</sub> emissions from the eventual combustion of the 16 million tons of coal mined in this modification would be negligible in relation to the impacts from coal burned on a nationwide or global basis. NEPA does not require a benefit-cost analysis, although CEQ NEPA regulations allow agencies to use it in NEPA analyses in certain circumstances (40 CFR § 1502.23). BLM's analyses of plans and projects usually provide a regional economic impact analysis, which estimates the direct, indirect, and cumulative economic activity that a given action is expected to create within a specified geographic area. This activity is typically expressed as projected changes in employment, personal income, or

economic output. In contrast, SCC provides one element of a benefit-cost analysis: the monetization of all meaningful economic benefits and costs. Monetizing only certain effects on social welfare can lead to an unbalanced assessment. Reporting the SCC in isolation would be misleading, and therefore BLM has determined that it will not be used for this action.

The BLM in the West Antelope II FEIS and the West Antelope II South Coal Lease Modification EA has used estimated GHG emissions associated with the proposed action as a reasonable proxy for the effects of climate change in its NEPA analysis. Specifically, the BLM analysis in the West Antelope II FEIS and the West Antelope II South Coal Lease Modification EA provided quantitative estimates of the GHG emissions associated with the project and placed those emissions in the context of state, regional, and national emissions. In addition, the BLM has considered and disclosed the projected effects of climate change on the resources within the lease modification area. The BLM also has acknowledged that climate science does not allow a precise connection between project-specific GHG emissions and specific environmental effects of climate change. This approach is consistent with the approach that federal courts have upheld when considering NEPA challenges to BLM federal coal leasing decisions. *WildEarth Guardians v. Jewell*, 738 F.3d 298, 309 n.5 (D.C. Cir. 2013) *WildEarth Guardians v. BLM*, Civ. Case No. 1:11-cv-1481 (RJL) (D.D.C. Mar. 31, 2014).

2. **Selected Alternative:** The Proposed Action consists of modifying existing federal coal lease WYW-177903 to add approximately 856.61 acres, which contain approximately 15,751,000 tons of minable coal, in order to avoid bypassing federal coal reserves.
3. **FONSI:** I have determined that the proposed project is in conformance with the approved land use plan. I have reviewed this EA including the analysis of potentially significant environmental impacts. I have determined that the Proposed Action with the special stipulations, as identified in the March 2010 Record of Decision for the West Antelope II Coal Lease Application Environmental Impact Statement, will not have any significant impacts on the human environment. It is my decision to recommend approval of the Proposed Action to modify the existing federal coal lease WYW-177903 to include tracts of unleased federal coal lands located within Sections 7, 8, 17, and 18, Township 40 North, Range 71 West.
4. **Public Involvement:** Additional public involvement was provided for by posting a notice on the BLM NEPA register which stated that BLM would be preparing an EA for this lease modification. The EA was posted on BLM's public website on March 21, 2014 ([http://www.blm.gov/wy/st/en/programs/energy/Coal\\_Resources/PRB\\_Coal/Docs.html](http://www.blm.gov/wy/st/en/programs/energy/Coal_Resources/PRB_Coal/Docs.html)). Press releases were provided to the Douglas, Gillette, and Casper, Wyoming newspapers on March 21, 2014. The EA was available for public comment from March 21, 2014 to April 4, 2014. All comments that BLM received were reviewed and considered.

The level of scoping and public involvement was adequate as this area was thoroughly scoped during preparation of the West Antelope II EIS. There was also additional public involvement in the mine permitting process as administered and managed by the Office

of Surface Mining, Reclamation and Enforcement and the Wyoming Department of Environmental Quality (WDEQ). The area proposed for the lease modification has already been permitted for mining by WDEQ.

**5. Rationale for Alternative Selected:** The Proposed Action was selected because it is in conformance with the Record of Decision for the Resource Management Plan/Final Environmental Impact Statement for the Casper Field Office and the BLM has determined it will not have any significant impacts on the human environment. This lease modification:

- Includes lands and deposits that cannot be developed as part of another potential or existing independent operation;
- Allows mining of federal coal that would otherwise be bypassed and not accessible nor recoverable by any other operation;
- Does not contain lands or deposits that have a competitive interest;
- Does not exceed the modified acreage limitation of 960 acres as specified in the Energy Policy Act of 2005;
- Serves the interests of the United States as described in the Mineral Leasing Act of 1920, as Amended;
- Achieves the Maximum Economic Recovery of federal coal resources; and
- Provides additional revenues to the United States in the form of coal lease bonuses, annual rentals, and production royalties.

### **Recommendation**

Based on my review of potential environmental impacts described in the West Antelope II South Lease Modification WYW-177903 Environmental Assessment (EA) and supporting documents in the case file, it is my determination that Federal coal lands in Sections 7, 8, 17, and 18, Township 40 North, Range 71 West, as described under the Proposed Action in the EA, are acceptable to be added to existing Federal coal lease WYW-177903. Therefore, it is my recommendation that a noncompetitive offer of the selected tract be made to the applicant.



District Manager  
Wyoming BLM High Plains District Office




Date

### **Concurrence/Approval**

I agree with the recommendation of the High Plains Acting District Manager and it is my decision to noncompetitively offer the lands in the selected tract to the applicant. Upon conformance of all requirements found in regulations 43 CFR 3432, I will approve the lease modification. The lease modification will also be subject to the BLM Special Stipulations as identified in the March 2010 Record of Decision for the West Antelope II Coal Lease Application Environmental Impact Statement.

For   
Deputy State Director for Minerals and Lands  
BLM Wyoming State Office

  
Date

## **Appeal Procedures**

You may appeal this decision to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4, and Form 1842-1. If you file an appeal, your notice of appeal must be filed in the BLM Wyoming State Office, P.O. Box 1828, 5353 Yellowstone Road, Cheyenne, WY 82003-1828, within 30 days of the publication of this decision. You have the burden of showing that the decision appealed from is in error.

If you wish to file a petition (pursuant to regulation 43 CFR 4.21) (request) for a stay (suspension) of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your Notice of Appeal.

A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

### **Standard for Obtaining a Stay**

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied;
- (2) The likelihood of appellant's success on the merits;
- (3) The likelihood of immediate and irreparable harm if the stay is not granted, and
- (4) Whether the public interest favors granting the stay.

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT

INFORMATION ON TAKING APPEALS TO THE INTERIOR BOARD OF LAND APPEALS

DO NOT APPEAL UNLESS

1. This decision is adverse to you,  
AND
2. You believe it is incorrect

IF YOU APPEAL, THE FOLLOWING PROCEDURES MUST BE FOLLOWED

1. NOTICE OF  
APPEAL.....

A person who wishes to appeal to the Interior Board of Land Appeals must file in the office of the officer who made the decision (not the Interior Board of Land Appeals) a notice that he wishes to appeal. A person served with the decision being appealed must transmit the *Notice of Appeal* in time for it to be filed in the office where it is required to be filed within 30 days after the date of service. If a decision is published in the FEDERAL REGISTER, a person not served with the decision must transmit a *Notice of Appeal* in time for it to be filed within 30 days after the date of publication (43 CFR 4.411 and 4.413).

2. WHERE TO FILE

NOTICE OF APPEAL.....

Bureau of Land Management  
5353 Yellowstone Rd.  
Cheyenne, WY 82009

or

Bureau of Land Management  
P.O. Box 1828  
Cheyenne, WY 82003

WITH COPY TO  
SOLICITOR.....

U.S. Department of the Interior  
Office of the Solicitor, Rocky Mountain Region  
755 Parfet St., #151  
Lakewood, CO 80215

3. STATEMENT OF REASONS

Within 30 days after filing the *Notice of Appeal*, file a complete statement of the reasons why you are appealing. This must be filed with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. If you fully stated your reasons for appealing when filing the *Notice of Appeal*, no additional statement is necessary (43 CFR 4.412 and 4.413).

WITH COPY TO  
SOLICITOR.....

U.S. Department of the Interior  
Office of the Solicitor, Rocky Mountain Region  
755 Parfet St., #151  
Lakewood, CO 80215

4. ADVERSE PARTIES.....

Within 15 days after each document is filed, each adverse party named in the decision and the Regional Solicitor or Field Solicitor having jurisdiction over the State in which the appeal arose must be served with a copy of: (a) the *Notice of Appeal*, (b) the Statement of Reasons, and (c) any other documents filed (43 CFR 4.413).

5. PROOF OF SERVICE.....

Within 15 days after any document is served on an adverse party, file proof of that service with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. This may consist of a certified or registered mail "Return Receipt Card" signed by the adverse party (43 CFR 4.401(c)).

6. REQUEST FOR STAY.....

Except where program-specific regulations place this decision in full force and effect or provide for an automatic stay, the decision becomes effective upon the expiration of the time allowed for filing an appeal unless a petition for a stay is timely filed together with a *Notice of Appeal* (43 CFR 4.21). If you wish to file a petition for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Interior Board of Land Appeals, the petition for a stay must accompany your *Notice of Appeal* (43 CFR 4.21 or 43 CFR 2801.10 or 43 CFR 2881.10). A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the *Notice of Appeal* and Petition for a Stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

**Standards for Obtaining a Stay.** Except as otherwise provided by law or other pertinent regulations, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards: (1) the relative harm to the parties if the stay is granted or denied, (2) the likelihood of the appellant's success on the merits, (3) the likelihood of immediate and irreparable harm if the stay is not granted, and (4) whether the public interest favors granting the stay.

Unless these procedures are followed, your appeal will be subject to dismissal (43 CFR 4.402). Be certain that all communications are identified by serial number of the case being appealed.

**NOTE:** A document is not filed until it is actually received in the proper office (43 CFR 4.401(a)). See 43 CFR Part 4, Subpart B for general rules relating to procedures and practice involving appeals.

(Continued on page 2)



#### 43 CFR SUBPART 1821--GENERAL INFORMATION

Sec. 1821.10 Where are BLM offices located? (a) In addition to the Headquarters Office in Washington, D.C. and seven national level support and service centers, BLM operates 12 State Offices each having several subsidiary offices called Field Offices. The addresses of the State Offices can be found in the most recent edition of 43 CFR 1821.10. The State Office geographical areas of jurisdiction are as follows:

##### STATE OFFICES AND AREAS OF JURISDICTION:

Alaska State Office ----- Alaska  
Arizona State Office ----- Arizona  
California State Office ----- California  
Colorado State Office ----- Colorado  
Eastern States Office ----- Arkansas, Iowa, Louisiana, Minnesota, Missouri  
and, all States east of the Mississippi River  
Idaho State Office ----- Idaho  
Montana State Office ----- Montana, North Dakota and South Dakota  
Nevada State Office ----- Nevada  
New Mexico State Office ----- New Mexico, Kansas, Oklahoma and Texas  
Oregon State Office ----- Oregon and Washington  
Utah State Office ----- Utah  
Wyoming State Office ----- Wyoming and Nebraska

(b) A list of the names, addresses, and geographical areas of jurisdiction of all Field Offices of the Bureau of Land Management can be obtained at the above addresses or any office of the Bureau of Land Management, including the Washington Office, Bureau of Land Management, 1849 C Street, NW, Washington, DC 20240.

(Form 1842-1, September 2006)